

ORIGINAL



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MEMORANDUM

TO: Docket Control

FROM: Steven M. Olea
Director
Utilities Division

Arizona Corporation Commission

DOCKETED

MAR 4 2011

DOCKETED BY

DATE: March 4, 2011

RE: IN THE MATTER OF THE APPLICATION OF LIBERTY-BELL TELECOM, LLC FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LONG DISTANCE, RESOLD LOCAL EXCHANGE AND FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES (DOCKET NO. T-20752A-10-0307)

Attached is the Staff Report for the above Application requesting approval for a Certificate of Convenience and Necessity ("CC&N") to provide the following services:

- Resold Long Distance Telecommunications Services
- Resold Local Exchange Telecommunications Services
- Facilities-Based Local Exchange Telecommunications Services

Staff is recommending approval of the Application with conditions.

SMO:PJG:red

Originator: Pamela J. Genung

Attachment: Original and Thirteen copies

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AZ CORP COMMISSION
DOCKET CONTROL

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DOCKET NO. T-20752A-10-0307

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

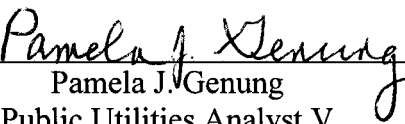
LIBERTY-BELL TELECOM, LLC
DOCKET NO. T-20752A-10-0307

IN THE MATTER OF THE APPLICATION OF LIBERTY- BELL TELECOM, LLC FOR
APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE
RESOLD LONG DISTANCE, RESOLD LOCAL EXCHANGE AND FACILITIES-BASED
LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

MARCH 4, 2011

STAFF ACKNOWLEDGMENT

The Staff Report for Liberty-Bell Telecom, LLC, Docket No. T-20752A-10-0307, was the responsibility of the Staff member listed below. Pamela J. Genung was responsible for the review and analysis of the Liberty-Bell Telecom, LLC Application for a Certificate of Convenience and Necessity to provide Resold Long Distance, Resold Local Exchange, and Facilities-Based Local Exchange Telecommunications Services within the State of Arizona, in addition to the petition for a determination that its proposed services should be classified as competitive.



Pamela J. Genung
Public Utilities Analyst V

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ATTACHMENT

States in Which Liberty-Bell Is Currently Certificated	Attachment A
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1. INTRODUCTION

On July 22, 2010, Liberty-Bell Telecom, LLC ("Liberty-Bell" or "Applicant" or "Company") filed an Application for a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance, resold local exchange, and facilities-based local exchange telecommunications services within the State of Arizona. The Applicant also petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive. On July 22, 2010, Liberty-Bell submitted a proposed tariff for the services it is requesting the authority to provide.

On November 22, 2010, Liberty-Bell filed a Notification of Acquisition of Interest of Liberty-Bell, LLC, the parent entity, by DISH Media Holdings Corporation. Liberty-Bell asserted in the Notification that the proposed acquisition will not in any way impact Liberty-Bell, LLC's wholly owned subsidiary, Liberty-Bell Telecom, LLC whose Application for a CC&N is currently pending, or Liberty-Bell Telecom, LLC's ongoing operations.

On January 5, 2011, Staff issued its First Set of Data Requests to Liberty-Bell. On January 14, 2011, Liberty-Bell filed an amended and restated Attachment A to its Application. Responses to Staff's First Set of Data Requests were received from Liberty-Bell on January 20, 2011.

Staff's review of this Application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive and if the Applicant's initial rates are just and reasonable.

2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

The Applicant is currently providing competitive local exchange and interexchange services in the states of Colorado, New Mexico, and Utah. Liberty-Bell indicated in its Application that it is currently authorized to offer competitive telecommunications services similar to services it intends to offer in Arizona in six additional states/jurisdictions, as listed in Attachment A. Staff contacted the Public Utility Commissions in those six states/jurisdictions to determine if Liberty-Bell is certificated or registered to provide competitive local exchange and interexchange telecommunications services in the states listed by the Applicant. Staff also inquired whether there were any consumer complaints filed against the Applicant. The information Staff obtained indicates that Liberty-Bell is authorized to provide local exchange and interexchange services in all six states/jurisdictions and there have been no consumer complaints filed against Liberty-Bell in any of those six states/jurisdictions.

The three members of the senior management team average over eighteen years experience each in the telecommunications industry. Liberty-Bell indicated in its Application that, as of July 15, 2010, Liberty-Bell employed thirty-three employees on a full-time basis and currently supports 10,000 existing clients.

In response to Staff Data Request PJG1-4, Liberty-Bell stated that it plans to provide customer service to its Arizona subscribers from its Iowa and Colorado customer service centers. Liberty-Bell intends to serve its facilities-based Arizona customers by obtaining facilities from Qwest Corporation under the UNE-Platform replacement product. Any maintenance and repair issues would be addressed by Qwest and coordinated with Liberty-Bell's qualified technical staff based in Iowa and Colorado. Liberty-Bell does not plan to maintain employees in Arizona.

Based on the above information, Staff believes Liberty-Bell possesses the technical capabilities to provide the services it is requesting the authority to provide in Arizona.

3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

The Applicant provided unaudited financial statements of Liberty-Bell Telecom, LLC for the two years ending December 31, 2008 and December 31, 2009. The financial statements for year ending 2008 list total assets of \$6,659,102; total equity of \$3,385,447 and a net income of \$1,921,926. The financial statements for year ending 2009 list total assets of \$7,415,350, total equity of \$4,194,303, and a net income of \$808,857. The Applicant did not provide notes related to the financial statements.

The Applicant stated in its proposed tariff (reference Section 2.5 of Liberty-Bell Telecom, LLC's proposed Arizona C.C.Tariff No. 1) that it does not require advances, deposits and prepayments.

The Commission's current performance bond or irrevocable sight draft Letter of Credit ("ISDLOC") requirements are \$10,000 for resold long distance (for those resellers who collect advances, prepayments, deposits, or are offering prepaid calling services), \$25,000 for resold local exchange, \$100,000 for facilities-based long distance, and \$100,000 for facilities-based local exchange services. Since the Applicant is requesting a CC&N for resold long distance, resold local exchange, and facilities-based local exchange telecommunications service, the minimum amount of a performance bond or an ISDLOC would be \$125,000. The performance bond or ISDLOC coverage needs to increase in increments equal to 50 percent of the total minimum performance bond or ISDLOC amount when the total amount of the advances, deposits, and prepayments is within 10 percent of the total minimum performance bond or ISDLOC amount. Further, measures should be taken to ensure that the Applicant will not discontinue service to its customers without first complying with Arizona Administrative Code ("A.A.C.") R14-2-1107.

To that end, Staff recommends that the Applicant procure either a performance bond or an ISDLOC equal to \$125,000. The minimum performance bond or ISDLOC amount of \$125,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond or ISDLOC amount should be increased in increments of \$62,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$12,500 of the performance bond or ISDLOC amount. If the Applicant desires to discontinue service, it must

file an Application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an Application to discontinue service. Failure to meet this requirement could result in forfeiture of the Applicant's performance bond or ISDLOC.

Staff further recommends that proof of the above mentioned performance bond or ISDLOC be docketed within 30 days of the effective date of a Decision in this matter. The original performance bond or ISDLOC should be filed with the Commission's Business Office and copies of the performance bond or ISDLOC with Docket Control, as a compliance item in this docket. The Commission may draw on the performance bond or ISDLOC, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLOC funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers.

4. ESTABLISHING RATES AND CHARGES

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

Both an initial rate (the actual rate to be charged) and a maximum rate must be listed for each competitive service offered, provided that the rate for the service is not less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Company indicating that its fair value rate base is zero. Accordingly, the Company's fair value rate base is too small to be useful in a fair value analysis. Liberty-Bell has submitted proposed tariff pages reflecting the rates that Liberty-Bell will be charging for its interexchange and local exchange services. Liberty-Bell has also provided additional rate comparison information of other competitive local exchange carriers in the State of Arizona. Staff has reviewed the proposed rates and believes they are comparable to the rates charged by competitive local carriers and local incumbent carriers operating in the State of Arizona. Therefore, while Staff considered the fair value rate base information submitted by the

Company, the fair value rate base information provided should not be given substantial weight in this analysis.

5. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES

Issues related to the provision of Local Exchange service are discussed below.

5.1 Number Portability

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

5.2 Provision of Basic Telephone Service and Universal Service

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

5.3 Quality of Service

Staff believes that the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for Qwest (f/k/a USWC) in Docket No. T-01051B-93-0183 (Decision No. 59421). Because the penalties developed in that docket were initiated because Qwest's level of service was not satisfactory and the Applicant does not have a similar history of service quality problems, Staff does not recommend that those penalties apply to the Applicant. In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that it is unnecessary to subject the Applicant to those penalties at this time.

5.4 Access to Alternative Local Exchange Service Providers

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of

providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

5.5 911 Service

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission 47 CFR Sections 64.3001 and 64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

5.6 Custom Local Area Signaling Services

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

6. REVIEW OF COMPLAINT INFORMATION

The Applicant has not had an Application for authority to provide service denied in any state. The Consumer Services Section of the Utilities Division reports that there have been no complaints, inquiries, or opinions filed against Liberty-Bell through February 7, 2011. In addition, Consumer Services reports that Liberty-Bell is in good standing with the Corporations Division of the Commission.

A search of the Federal Communications Commission's ("FCC") website reveals a Consent Decree resolving a matter between the Enforcement Bureau of the FCC and Liberty-Bell Telecom, LLC, and an Order, released December 14, 2010 by the FCC. The Consent Decree terminates a Bureau investigation into possible violations of the Communications Act of 1934 by reaching a final settlement agreement by which all issues were concluded.¹

The Applicant indicated that none of its officers, directors or partners have been convicted of any criminal acts in the past ten (10) years. The Applicant also indicated that none of its officers, directors or partners have been involved in any civil or criminal investigations, or any informal complaints. In its Application, Liberty-Bell stated that it is a party to a Qwest

¹ FCC DA 10-2248, Adopted: December 14, 2010; Released: December 14, 2010.

Communications Corporation ("QCC") Complaint proceeding filed in Colorado. QCC alleged that a number of Colorado competitive local exchange carriers ("CLECs") have violated Colorado statutes and regulations by providing intrastate switched access services to QCC's competitors pursuant to unfiled, off-tariff agreements and, therefore, have subjected QCC to unjust and unreasonable rate discrimination. A Hearing in this matter has not yet been held.

7. COMPETITIVE SERVICES ANALYSIS

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive.

7.1 Competitive Services Analysis for Local Exchange Services

7.1.1 A description of the general economic conditions that exist which make the relevant market for the service one that is competitive.

The local exchange market that the Applicant seeks to enter is one in which a number of new CLECs have been authorized to provide local exchange service. Nevertheless, ILECs hold a virtual monopoly in the local exchange service market. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, the Applicant will have to compete with those companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments.

7.1.2 The number of alternative providers of the service.

Qwest and various independent LECs are the primary providers of local exchange service in the State. Several CLECs and local exchange resellers are also providing local exchange service.

7.1.3 The estimated market share held by each alternative provider of the service.

Since Qwest and the independent LECs are the primary providers of local exchange service in the State, they have a large share of the market. Since the CLECs and local exchange resellers have only recently been authorized to offer service, they have limited market share.

7.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.

None.

7.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

ILECs have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the CLECs and local exchange resellers also offer substantially similar services.

7.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories and which provide them with a virtual monopoly over local exchange service. New entrants are also beginning to enter this market.
- b. One in which new entrants will be dependent upon ILECs:
 - 1. To terminate traffic to customers.
 - 2. To provide essential local exchange service elements until the entrant's own network has been built.
 - 3. For interconnection.
- c. One in which ILECs have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market and one in which new entrants do not have a long history with any customers.
- d. One in which most customers have few, if any choices since there is generally only one provider of local exchange service in each service territory.
- e. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

7.2 Competitive Services Analysis for Interexchange Services

7.2.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that, is competitive.

The interexchange market that the Applicant seeks to enter is one in which numerous facilities-based and resold interexchange carriers have been authorized to provide service throughout the State. The Applicant will be a new entrant in this market and, as such, will have to compete with those companies in order to obtain customers.

7.2.2 The number of alternative providers of the service.

There are a large number of facilities-based and resold interexchange carriers providing both interLATA and intraLATA interexchange service throughout the State. In addition, various ILECs provide intraLATA interexchange service in many areas of the State.

7.2.3 The estimated market share held by each alternative provider of the service.

The large facilities-based interexchange carriers (AT&T, Sprint, MCI WorldCom, etc.) hold a majority of the interLATA interexchange market, and the ILECs provide a large portion of the intraLATA interexchange market. Numerous other interexchange carriers have a smaller part of the market and one in which new entrants do not have a long history with any customers.

7.2.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.

None.

7.2.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

Both facilities-based and resold interexchange carriers have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the ILECs offer similar intraLATA toll services.

7.2.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).

The interexchange service market is:

- a. One with numerous competitors and limited barriers to entry.
- b. One in which established interexchange carriers have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market.
- c. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

8. RECOMMENDATIONS

The following sections contain Staff recommendations on the Application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

8.1 Recommendations on the Application for a CC&N

Staff recommends that Applicant's Application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;

6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Company and has determined that its fair value rate base is zero. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local carriers and local incumbent carriers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;
7. If at some future date, the Applicant wants to collect advances, deposits and/or prepayments from its interexchange or local service customers, Staff recommends that the Applicant be required to file an Application with the Commission for Commission approval. Such Application must reference the decision in this docket and must explain the Applicant's plans for procuring its performance bond or ISDLOC;
8. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
9. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;
10. That the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services;

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. The Applicant shall docket conforming tariffs pages for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the Application.
2. The Applicant shall:
 - a. Procure either a performance bond or an ISDLOC equal to \$125,000. The minimum performance bond or ISDLOC amount of \$125,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond or ISDLOC amount should be increased in increments of \$62,500. This increase should occur when the total amount

of the advances, deposits, and prepayments is within \$12,500 of the performance bond or ISDLOC amount.

- b. Docket proof of the original performance bond or ISDLOC with the Commission's Business Office and copies of the performance bond or ISDLOC with Docket Control, as a compliance item in this docket, within 30 days of the effective date of a Decision in this matter. The performance bond or ISDLOC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLOC, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLOC funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers.

3. Abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

8.2 Recommendation on the Applicant's Petition to Have Its Proposed Services Classified as Competitive

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange service market where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.

Attachment A

The following are the states/jurisdictions in which Liberty-Bell is currently certificated to provide competitive telecommunications services:

1. Colorado
2. Montana
3. New Mexico
4. North Dakota
5. Utah
6. Washington